

GREEN BAY DIVISION

Defendant.

Case 1:15-cv-00636-WCG Filed 03/28/16 Page 1 of 5 Document 31

notice. *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 492-93 (E.D. Cal. 2006) (“First class mail is ordinarily sufficient to notify class members who have been identified”)

The text of the accompanying notice was shared with and revised by Defendant’s counsel. The parties are agreed on the language of the accompanying proposed notice, provided that it is translated into Haitian Creole, the native language of most of the class members.

GLK Foods proposes that the class notice be accompanied by a form that class members may use to opt-out of the case. The Plaintiff opposes this request because it is neither necessary and is likely to confuse the class members, most of whom are not fluent in English. *See* Second Amended Complaint (Docket Entry 28), at 3-4, ¶ 12.

Due process is satisfied where a fully descriptive notice is sent first-class mail to each class member, with an explanation of the right to ‘opt out,’” within a reasonable time. *Makaeff v. Trump University, LLC*, No. 10-cv-940, 2015 WL 5638192 at *2 (S.D. Cal., Sep. 21, 2015), citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). Due process does not require inclusion of an opt-out form with the class notice. Notice is adequate if it may be understood by the average class member. 4 *Newberg on Class Actions* § 11.53 at P. 167 (4th Ed. 2013). If the notice is sufficiently clear, there is no need for inclusion of an opt out notice. *See e.g.*, 3 Alba Conte & Herbert B. Newberg *Newberg on Class Actions* § 8.21, at 232 (4th ed.2002) (“courts have rejected the inclusion of opt-out forms with published and mailed combination notices”); *In re Fedex Ground Package System, Inc. Employment Practices Litigation*, No. 3:05-MD-527, 2008 WL 927654 at *3 (N.D. Ind., Apr. 4, 2008) (“Nothing in Fed.R.Civ.P. 23(c)(2) requires an opt out form , and the notice provides reasonable and clear instructions on the procedure of opting out...Consequently, the advantages provided by an “opt

out form” would be minuscule, and there is simply no need to require Plaintiffs to include one”); *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F.Supp.2d 140, 152-53 (D. Conn. 2005). Indeed, the model class notice forms provided by the Federal Judicial Center “do not appear to contemplate the inclusion of an exclusion notice form.” *Krzesniak v. Cendant Corp.*, No. C-05-05156 , 2007 WL 4468678 at *3 (N.D. Cal. Dec. 17, 2007).

As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice so as to confuse class members. *Spann v. J.C. Penney Corp.*, No. SACV-12-0215, 2016 WL 297399 at *15 (C.D. Cal. Jan 25, 2016). For this reason, courts have rejected requests to include an opt-out form in instances when the notice clearly described the out-opt procedures. *Sibley v. Sprint Nextel Corp.*, No. 08-2063, 2009 WL 662630 at *2 (D.Kan. March 13, 2009) (not necessary to risk creating confusion by including an opt-in form where the class notice clearly describes the simple steps to opt-out of the case). *Krzesniak*, 2007 WL 446878 at *3 (a separate opt-out form is likely to “engender confusion and may encourage class members to unwittingly opt out of the class”); *Roberts v. Heim*, 130 F.R.D. 416, 423 (N.D. Cal. 1988) (observing that on balance “a separate form will engender confusion and encourage investors to unwittingly opt out of the class.”)

The proposed class notice clearly sets out the procedures for opting out in simple and straight-forward terms. Class members may contact Plaintiff’s counsel, who is proficient in Haitian Creole. Under these circumstances, there is no need for inclusion of an opt out form, which creates a risk that class members will unwittingly opt out of the case.¹

¹ In the related case involving H-2B workers employed in 2011 by GLK Foods, the Court approved a considerably more complex class notice, without the inclusion of any opt out form. See *Jurado Jimenez v. GLK Foods, LLC*, Case No. 1:12-cv-209, Docket Entry 98-1 (proposed

Respectfully submitted,

/s/ Gregory S. Schell

Gregory S. Schell

Florida Bar Number 287199

MIGRANT FARMWORKER JUSTICE
PROJECT

Post Office Box 32159

Palm Beach Gardens, Florida 33420

Telephone: (561) 582-3921

e-mail: Greg@Floridalegal.Org

Attorney for Plaintiff

class notice) and text order of October 8, 2014 (approving class notice).

- 4 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document will be served on counsel listed below
by CM/ECF on March 28, 2016:

Bradley S. Bell
BELL LAW GROUP, P.A.
407 N. Howard Avenue
Suite 201
Tampa, Florida 33606

Gregory B. Gill, Sr.
GILL & GILL, S.C.
128 North Durkee Street
Appleton, Wisconsin 54911

/s/ Gregory S. Schell
Gregory S. Schell